

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES R. CAMPS and DEPARTMENT OF VETERANS AFFAIRS,
CALVERTON NATIONAL CEMETARY, Calverton, NY

*Docket No. 00-1235; Submitted on the Record;
Issued April 18, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The Office accepted that appellant sustained low back derangement in the performance of duty on April 25, 1986. By decision dated January 14, 1999, the Office reduced appellant's compensation to zero on the grounds that he failed to continue participation in vocational rehabilitation. By decision dated December 10, 1999, the Office determined that appellant's request for reconsideration was of a repetitious nature and insufficient to warrant reopening the case for merit review.¹

The Board has reviewed the record and finds that the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.² As appellant filed his appeal on February 17, 2000, the only decision over which the Board has jurisdiction on this appeal is the December 10, 1999 decision denying his request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's regulations provides that a claimant may

¹ The final sentence of the memorandum accompanying the December 10, 1999 decision refers to the lack of "clear evidence of error," a standard appropriate only for untimely reconsideration requests. The Office did not find the reconsideration request untimely and neither the decision or the remainder of the memorandum suggest that the clear evidence of error standard was applied in this case.

² See 20 C.F.R. § 501.3(d).

³ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁵

In this case, appellant resubmitted medical evidence previously of record. He argues that he did have good cause to discontinue rehabilitation participation,⁶ based on the evidence from his attending physician, Dr. Michael Soojian, an orthopedic surgeon, that he was unable to return to work in any capacity. This cannot be considered a new and relevant legal argument. The reports of Dr. Soojian were before the Office at the time of the January 14, 1999 decision; the Office had further developed the record and found that the weight of the evidence showed that appellant was physically capable of performing work and therefore was a candidate for continuing vocational rehabilitation.

The Board finds that appellant did not submit new and relevant evidence, nor did he meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Accordingly, the Office properly denied the request without merit review of the claim.

The decision of the Office of Workers' Compensation Programs dated December 12, 1999 is affirmed.

Dated, Washington, DC
April 18, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁴ 20 C.F.R. § 10.606(b) (2).

⁵ 20 C.F.R. § 10.608(b); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

⁶ Section 8113(b) of the Act provides that if an individual "without good cause" fails to undergo vocational rehabilitation, the Office may reduce his compensation to reflect what probably would have been his wage-earning capacity in the absence of the failure.